

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

JAMIE LEE COKER,

Plaintiff,

v.

GEORGE KIMBROUGH,

Defendant.

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CIVIL ACTION NO. 3:18-CV-00444

**DEFENDANT KIMBROUGH'S MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT KIMBROUGH'S PROPOSED JURY INSTRUCTIONS**

Defendant George Kimbrough ("Kimbrough"), by and through the Office of the Attorney General of Texas, files this memorandum of law in support of Defendant Kimbrough's Proposed Jury Instructions:

Following *Whitley v. Albers*, the Supreme Court in *Hudson v. McMillan* found that under the Eighth Amendment, "[i]n the excessive force context," when "prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated." *Hudson v. McMillan*, 503 U.S. 1, 9 (1992) (emphasis added); *Whitley v. Albers*, 475 U.S. 327 (1986) (applying the same standard).

And similarly, the Fifth Circuit Pattern Jury Instructions acknowledge the standard set out by *Hudson* in footnote six to its Pattern Jury Instruction as to Excessive Force. 5th Cir. Pattern Jury Instructions 10.7, n. 6 (citing *Wilkins v. Gaddy*, 559 U.S. 34, 37 (2010)) (finding that the "core judicial inquiry" is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.").

Courts, including the Fifth Circuit, have looked to *Hudson's* "malicious and sadistic" standard. *Cardona v. Taylor*, 828 F. App'x 198, 201 (5th Cir. 2020) (applying the "malicious and sadistic" standard.); *Baldwin v. Stalder*, 137 F.3d 836, 841 (5th Cir. 1998) (similarly applying the

“malicious and sadistic” standard); *Bourne v. Gunnels*, 921 F.3d 484, 493 (5th Cir. 2019) (applying the same standard). This Court and Courts throughout this circuit have done the same. *Hill v. Oguzie*, 3:19-cv-00021 (S.D. Tex October 3, 2023), ECF No. 125 (Brown, J) (applying the malicious *and* sadistic standard); *McCoy v. Alamu*, 3:17-cv-00235 (S.D. Tex August 23, 2022), ECF No. 120 (Brown, J) (applying the malicious *and* sadistic standard); *Edwards v. Richerson, et al.*, 2:20-cv-00084-M-BR (N.D. Tex. July 11, 2023), ECF No.75 (Lynn, J) (applying the malicious *and* sadistic standard).

Defendant respectfully provides this legal memorandum to the Court for review.

Respectfully submitted,

KEN PAXTON

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/s/ JACOB E. PRZADA

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**ATTORNEYS FOR DEFENDANT
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NOTICE OF ELECTRONIC FILING

I, **JACOB E. PRZADA**, Assistant Attorney General of Texas, do hereby certify that I have electronically submitted for filing, a true and correct copy of **Defendant Kimbrough's Memorandum of Law in Support of Defendant Kimbrough's Proposed Jury Instructions** in accordance with the Electronic Case Filing System of the Southern District of Texas on this, November 9, 2023.

/s/ JACOB E. PRZADA
JACOB E. PRZADA
Assistant Attorney General

CERTIFICATE OF SERVICE

I, **JACOB E. PRZADA** Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing **Defendant Kimbrough's Memorandum of Law in Support of Defendant Kimbrough's Proposed Jury Instructions** has been served has been served on all counsel of record by the Electronic Case Filing System of the Southern District of Texas on November 9, 2023.

/s/ JACOB E. PRZADA
JACOB E. PRZADA
Assistant Attorney General